



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

TO: Chairpersons Commissioner Matti Bower and
Commissioner Luis R. Garcia, Jr.
Members of the Condominium Reform Taskforce
Alex Annunziato – Appointed by Commissioner Matti Bower
Nina Baliga – Appointed by Commissioner Luis R. Garcia, Jr.
Frank Del Vecchio – Appointed by Vice-Mayor Richard Steinberg
Joe Fontana – Appointed by Commissioner Saul Gross
Michael C. Gongora – Appointed by Vice-Mayor Richard Steinberg
Calvin Kohli – Appointed by Commissioner Saul Gross
Luis Maseda – Appointed by Commissioner Jerry Libbin
Milli Membiela – Appointed by Commissioner Simon Cruz
Barbara Montero – Appointed by Commissioner Jerry Libbin
Maria Ellen Negrin – Appointed by Commissioner Luis R. Garcia, Jr.
Rocio Sullivan – Appointed by Commissioner Simon Cruz
Stevan M. Zaiman – Appointed by Commissioner Matti Bower

**CONDOMINIUM REFORM TASKFORCE MEETING
February 7, 2006 @ 6:00PM
MAYOR'S LARGE CONFERENCE ROOM**

AGENDA

ITEM ONE:

**Sunshine Law/Public Records/Ethics Rules for Committee Compliance –
presented by Legal Department**

ITEM TWO:

Legal Review – presented by Legal Department

ITEM THREE:

Materials submitted by Committee Member – Nina Baliga

ITEM FOUR:

**Scheduling of future meetings – presented by Tim Hemstreet, Assistant
City Manager**

Sunshine Law/Public Records/Ethics Rules for Committee Compliance

MATERIALS TO BE DISTRIBUTED AT MEETING

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Legal Review

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**CITY OF MIAMI BEACH
OFFICE OF THE CITY ATTORNEY**

MEMORANDUM

TO: Mayor David Dermer
Members of the City Commission
Jorge Gonzalez, City Manager

FROM: Murray H. Dubbin 
City Attorney

Debora J. Turner 
First Assistant City Attorney

SUBJECT: **The Jurisdiction of Local Governments under the Florida Condominium Act**

DATE: January 23, 2006

Pursuant to the request of Mayor David Dermer at the December 7, 2005 Commission meeting, the following memorandum was prepared to address questions concerning the jurisdiction of the City to enact reforms in the area of condominium conversions. Section A provides a general legal analysis of applicable preemption and conflict issues, Section B addresses the specific limitations of local governments under the Florida Condominium Act, and Section C proposes possible solutions given the limited parameters of local government action in this area.

A. IN GENERAL: PREEMPTION AND CONFLICT ISSUES

Legislation may be enacted concurrently by both state and local governments in areas not preempted, either expressly or implied, by the state, and as long as the local concurrent legislation does not conflict with state law. City of Miami Beach v. Rocio Corp., 404 So. 2d 1066, 1070 (Fla. 3rd DCA 1981)¹. Preemption by the state need not be explicit, so long as it is

¹ In Rocio, the Third District, interpreting the 1979 Florida Condominium Act, which pre-dated the Roth Act (Part IV of Chapter 718 entitled "Conversions to Condominium"), found that although the 1979 version of the Act did not expressly, or by implication, preempt the subject of condominium conversion to state government, a City of Miami Beach ordinance conflicted with state law because conduct permitted by the State was not allowed by the City ordinance via the imposition of a supplementary burden (*i.e.*, a 90 day moratorium on conversions). Therefore, the City's ordinance was enjoined from enforcement. Subsequently, the State Legislature addressed the problem when it enacted the Roth Act. That Act gave counties the authority to enact legislation to provide for lease extensions when shortages in rental units were due to condominium conversions. Both Dade and Broward Counties enacted such limited legislation in 1980. See § 17-01, Miami-Dade County Code; §§ 5-299 thru 5-301, Broward County Code.

clear that the legislature has clearly preempted local regulation of the subject.” City of Miami v. Wellman, 875 So. 2d 635, 640. (Fla. 3d DCA 2004). For example, courts may “imply” preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area and where strong public policy reasons exist for finding an area to be preempted by the Legislature.” Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996) (citing Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984)).² Moreover, preemption may not completely bar a local government from regulating on a subject, but may exist only as to narrow topics within a broader topic of a state law. See Phantom of Clearwater v. Pinellas County, 894 So. 2d 1011, 1019-1021 (Fla. 1st DCA 2005) (although county was not preempted entirely from legislating in area of fireworks, some aspects of state law arguably preempted county and certain penalty provisions of county ordinance were found to be in conflict with state law).

B. THE FLORIDA CONDOMINIUM ACT LIMITS LOCAL GOVERNMENT REGULATION

Under the current version of Florida Condominium Act contained in Chapter 718 of the Florida Statutes, extensive and comprehensive regulations for condominiums and conversions are provided. Although not entirely preempting local regulations in this area, the Act only authorizes local government to act in certain limited areas. For example, Section 718.606(6) allows counties to enact legislation to extend rental agreements where there is a “grave housing emergency;” Section 718.507 provides that local building and zoning laws must not discriminate as to the condominium form of ownership and must apply equally to all buildings and improvements of the same kind;³ and Section 718.616(4) requires a developer to file, with its disclosure, a letter issued by a municipality which acknowledges compliance with the applicable zoning requirements. The Act does not specifically authorize local governments to enact legislation which would be more restrictive than the State’s requirements.⁴ Moreover, in 1998, the Florida Legislature enacted Section 718.621 which specifically authorized the Division of Florida Land Sales, Condominiums, and Mobile Homes (the “Division”) to promulgate rules

² “If there is any doubt as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute.” Wellman, 875 So. 2d at 640 (citing Rocio, 404 So. 2d at 1069 (Fla. 3d DCA 1981)).

³ See Lifter v. Metropolitan Dade County, 482 So. 2d 479 (Fla. 3d DCA 1986) (county zoning ordinance requiring notice from subdividers of hotels and motels of continued compliance with density and parking requirements did not conflict with Condominium Act).

⁴ Examples of state laws that have expressly allowed local government to enact more restrictive laws include Section 553.73(4)(b) of the Florida Building Code which authorizes local governments to adopt “more stringent” technical provisions “than those specified in the Florida Building Code.” See also GLA and Assoc.s, Inc. v. City of Boca Raton, 855 So. 2d 278 (Fla. 4th DCA 2003) (city ordinance providing stricter setback requirements not preempted by state Shore Preservation Act where Act expressly authorized municipalities to impose setback requirements “equal to, or more strict than” the Act).

concerning condominium conversions.

For all of the foregoing reasons, local governments are limited in their ability to regulate condominium conversions and may be precluded from adopting legislation that would impose stricter condominium conversion requirements.⁵ Moreover, regardless of the extent to which local governments may be preempted under the Condominium Act, local regulations concerning condominium conversion requirements cannot be adopted that would conflict with state law. See Pinellas County; Rocio.

In view of the foregoing, the following local solutions may be explored to address concerns with regard to condominium conversions and to provide additional safeguards to the public

C. PROPOSED SOLUTIONS TO CONDOMINIUM CONVERSION CONCERNS

1. Adopt Stricter Building Code Requirements

Amendments to the City Code could be considered that would apply evenly to all buildings on Miami Beach. The building recertification process for historic buildings is currently going through the Committee process. This proposal would require all buildings older than 40 years to be recertified every 5 years.

2. Expand Content of Municipal "Zoning Letter"

Rudolph Prinz, Bureau Chief for the Standards and Registration Division of the Department of Business and Professional Regulation, has suggested that a zoning "letter," required to be issued by a municipality pursuant to Section 718.616(4), Fla. Stat., can provide other information, in addition to that regarding "compliance with applicable zoning requirements". In such zoning "letter," a municipality can notify the State of any problems or special consideration which should be given to a particular conversion application because the condition of the building may not be fully or accurately reflected in the architect or engineer's report. As explained by Mr. Prinz, a municipality's "zoning letter" may be used, and has been used, as an opportunity to advise the State of concerns which can then be addressed at the State level and which could trigger the State to require "other" information pursuant to Section 718.502(5), Fla. Stat., in the developer's offering statement. Specifically, Section 718.502(5) states that "[i]n addition to those disclosures described by s.s. 718.503 and 718.504, the Division is authorized to require such other disclosure as deemed necessary to fully or fairly disclose all aspects of the offering."

⁵ The General Counsel for the Department of Business and Professional Regulation, concurs with our concern relative to the adoption of legislation that would impose stricter restrictions on condominium conversions as such may be preempted by, or conflict with, state law.

3. Public Education and Notification

The City's communication with Condominium residents can be expanded with regard to City-issued code violations. Efforts could include, community workshops, improved website communications, and visible posting of condominium violations.

4. Urge the Legislature to Strengthen the Condominium Act

A local government can lobby its legislators to make specific changes to Chapter 718. For example, disclosure requirements could be strengthened by the State to address concerns that: a) sufficient information is not currently provided on the report required under Section 718.616; b) the report that is submitted should go through a more thorough analysis or review when received by the State; c) condominium documents should be required to reflect restrictions on unit sizes and uses; require that all purchasers have this disclosed to them in writing and that they execute an acknowledgement to such restrictions; d) disclosure be provided in writing by realtors, registered agents, and/or other professionals involved in marketing and selling hotel/condominium units to prospective purchasers of any and all restrictions and code violations; e) encourage the State to create the statutory provisions to allow conduit financing through counties and municipalities to provide for interest free loans to condominiums to correct significant building, fire, and/or life safety violations at no risk to the participating local government (similar to Industrial Revenue Bonds); and f) encourage the State to create a grant program to partially offset the costs of building, fire, and life-safety related significant renovations for older structures.

5. Amend the City's Occupational License Code Provisions

Provisions could be considered that would require condominium associations, at license renewal, to provide confirmation that all unit owners have been provided notice of all code violations in the building's common areas.

6. Modify the City's Lien Search and Violation Search Request Forms

These forms could be modified to encourage the requestor to seek information on common areas in a building in addition to a prospective unit. (This has already been implemented).

7. Create a Community-Based Task Force

A task force could discuss the foregoing ideas and/or generate additional ideas to recommend to the City Commission. (A Commission Task Force has already been created).

**Materials submitted by
Committee Member – Nina Baliga**

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For Immediate Release

Contact: Hiram Ruiz

786-252-6717

NOTE TO REPORTERS: MIAMI BEACH CITY COMMISSION COMMITTEE SET TO CONSIDER ORDINANCE AT MEETING MONDAY NOV. 14

Poll Taken Before Wilma Shows Majority Support Condo Reform

Ordinance Would Require Condo Mgt. Companies to Have Hurricane Emergency Plans, Be Licensed, and Disclose

MIAMI— A poll of 400 Miami Beach registered voters likely to participate in the November 15th, 2005 municipal election showed that a clear majority supports three basic reforms of the condo management industry addressed in an Ordinance now before the City Commission. The Poll (report attached) was conducted by Bendixen & Associates between September 10th and September 14th of this year. The margin of error for the poll is 5 percentage points.

According to the poll:

**** A majority of voters (54 percent) think that the condominium management industry in Miami Beach is in need of basic reform.**

**** 77 percent of voters support the proposal to require workers at condominium buildings to be trained in how to prepare for, respond to, and recover from hurricanes.**

**** 69 percent support the proposal to require condo management companies in Miami Beach to be licensed. According to the poll, voters feel that this proposal would ensure better services at their buildings and make the management companies more accountable to the owners.**

**** 70 percent of voters support the proposal to require open bidding and financial disclosure when contracts are negotiated between condominium managers and outside contractors. According to the poll, voters felt that the proposal would guarantee that unit owners are getting the best services at the best prices.**

Last month, CleanCondos, a project of SEIU, launched a campaign to urge the Miami Beach City Commission to enact provisions that would:

- Require residential property management services operating in Miami Beach to be licensed, and that the granting and renewal of this license be based on maintaining high fiscal and ethical standards for operation.
- Require property managers and buildings to have a uniform hurricane emergency plan, and that workers receive necessary and appropriate training.
- Require management companies to provide full disclosure of their relationships with contractors and vendors for building goods and services.

About 50 percent of condominiums in Miami Beach employ condo management firms. These firms keep the condo's books, oversee maintenance, and coordinate basic services. Presently, these firms are unlicensed and unregulated, leading to abuse.



To: Interested Parties

From: Sergio Bendixen
President
Bendixen & Associates

Date: September 29, 2005

Re: Poll of Miami Beach voters

Bendixen & Associates interviewed 400 Miami Beach registered voters likely to participate in the November 1st, 2005 municipal election. The interviews were conducted in English and Spanish between September 10th and September 14th of this year. The margin of error for the poll is 5 percentage points.

The public opinion study clearly indicates that a solid majority of Miami Beach likely voters support the three major components of a proposed municipal ordinance – sponsored by SEIU - on condominium management in Miami Beach. The results of the study were the following:

**** A majority of voters (54 percent) think that the condominium management industry in Miami Beach is in need of basic reform. Hispanic voters are the strongest supporters (67 percent) of this type of reform.**

**** The proposal that would require workers at condominium buildings to be trained in how to prepare for, respond to, and recover from hurricanes has overwhelming support**

from the Miami Beach electorate. Seventy-seven percent support it. They feel that this proposal would ensure a safe environment for the workers and provide professional protection for the personal investment of the unit owners. Support for this proposal increases to 83 percent among seniors – those 65 years of age and older.

** The proposal that would require the companies that manage condominiums in Miami Beach to be licensed has the support of about two-thirds (69 percent) of the voters. They feel that this proposal would ensure better services at their buildings and make the management companies more accountable to the owners. Support for this proposal increases to 77 percent among Hispanic voters.

** The proposal that would require open bidding and financial disclosure when contracts are negotiated between condominium managers and outside contractors is supported by 70 percent of Miami Beach voters. They feel that this proposal would guarantee that unit owners are getting the best services at the best prices.

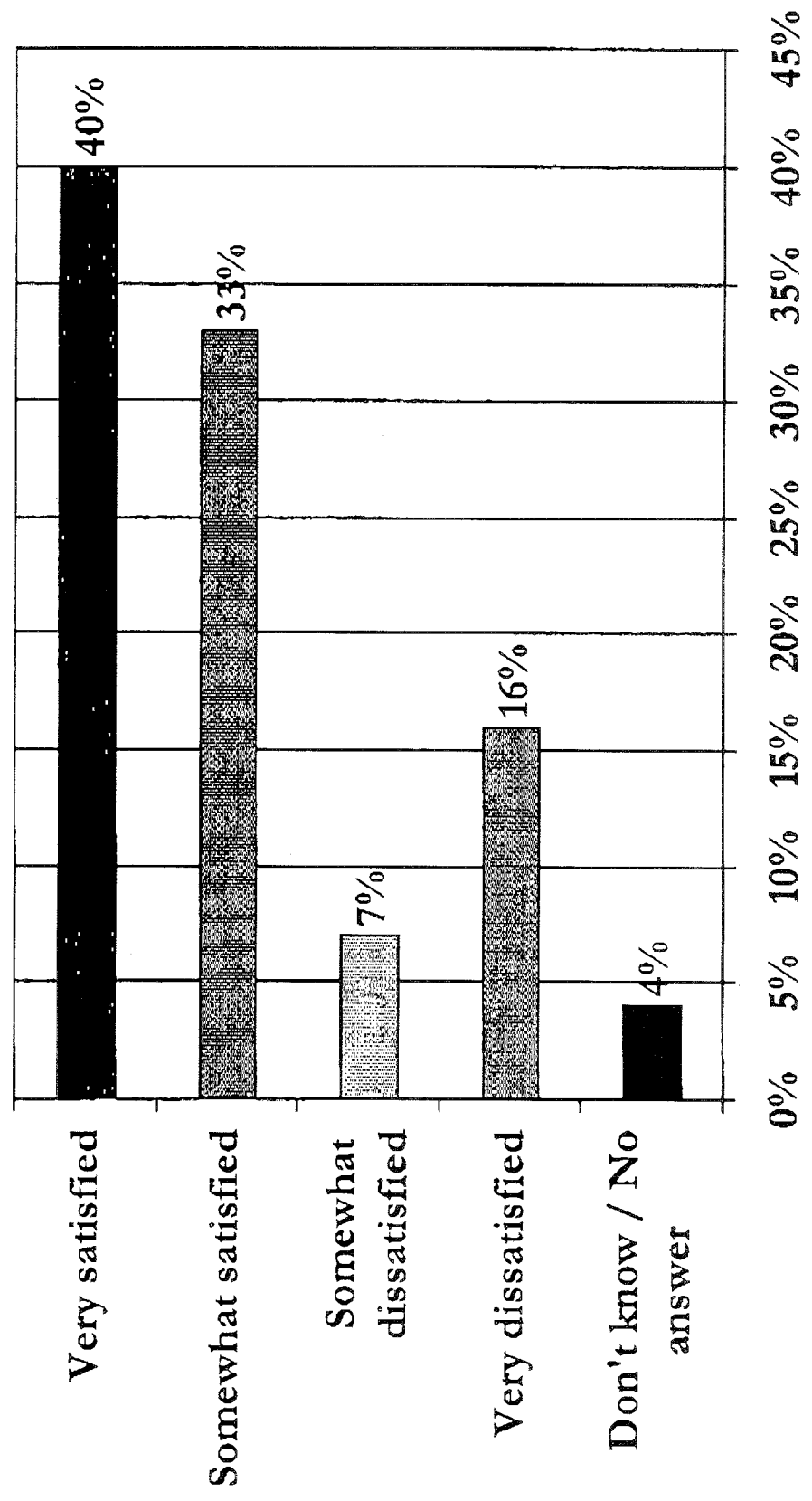
SEIU Stronger Together

Survey of Miami Beach Registered Voters
Likely to Vote on November 1st

September 21, 2005

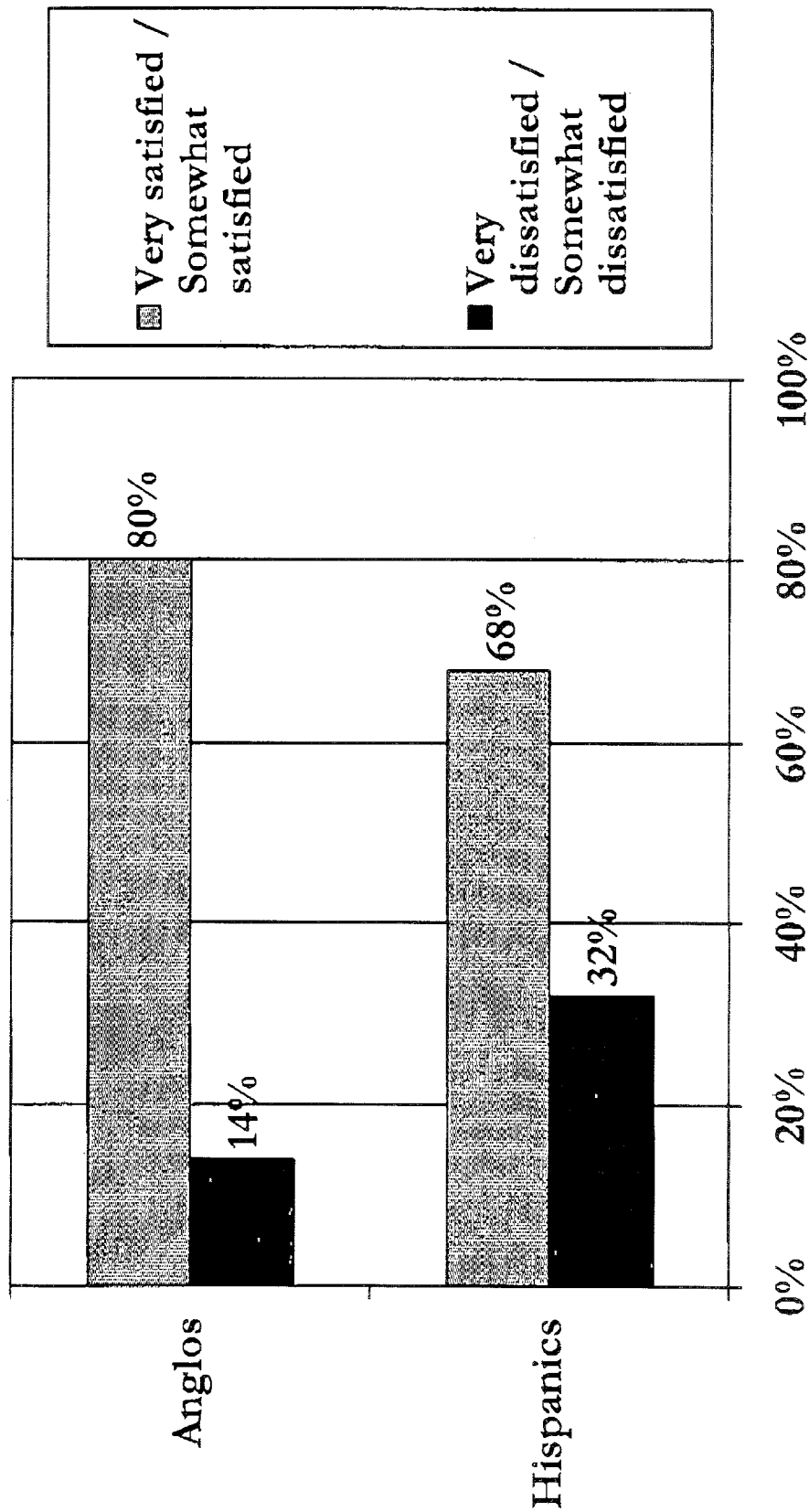


Would you say that you are satisfied or dissatisfied with the management of your condominium building?



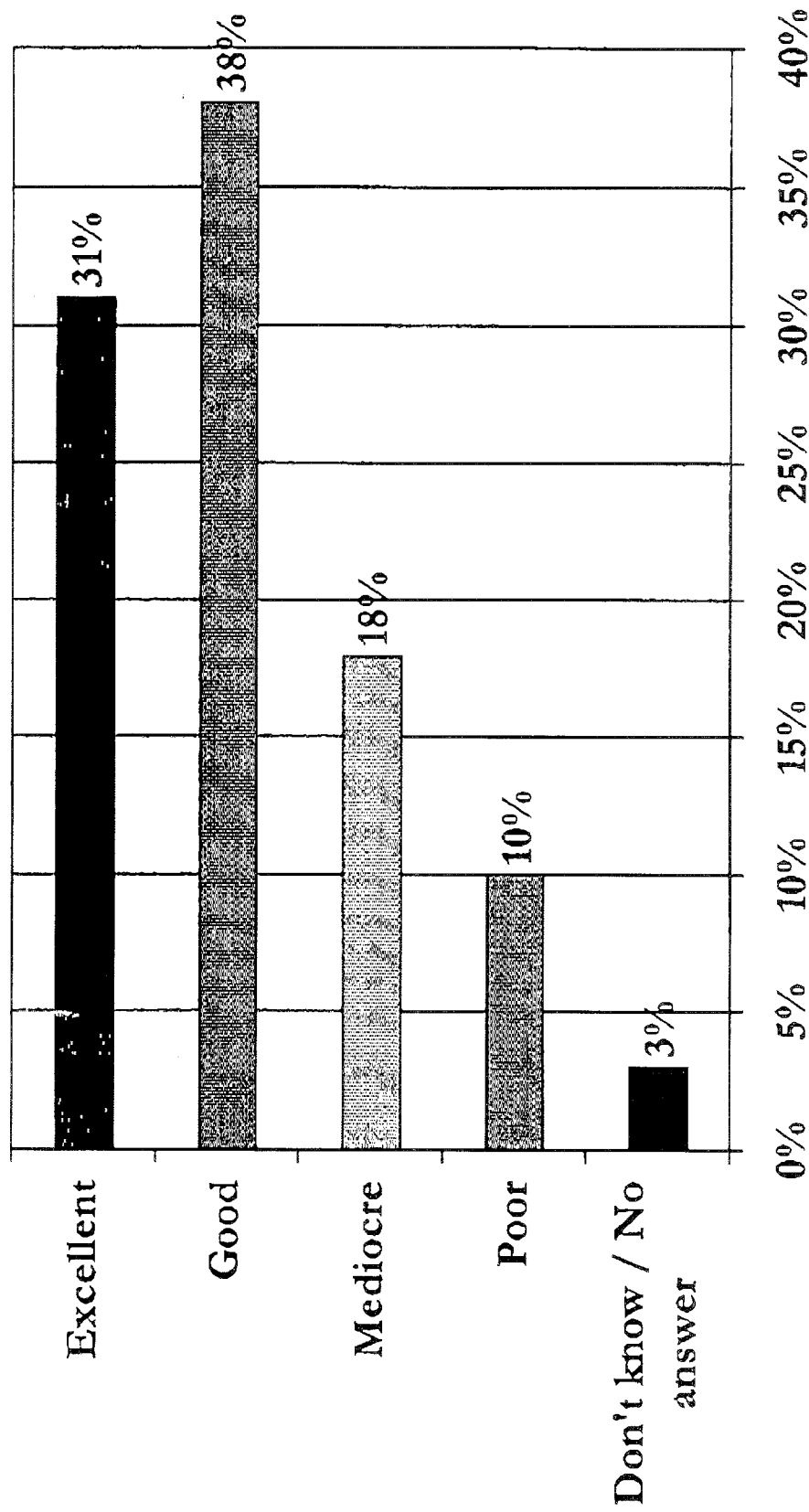
Would you say that you are satisfied or dissatisfied with the management of your condominium building?

By Ethnicity

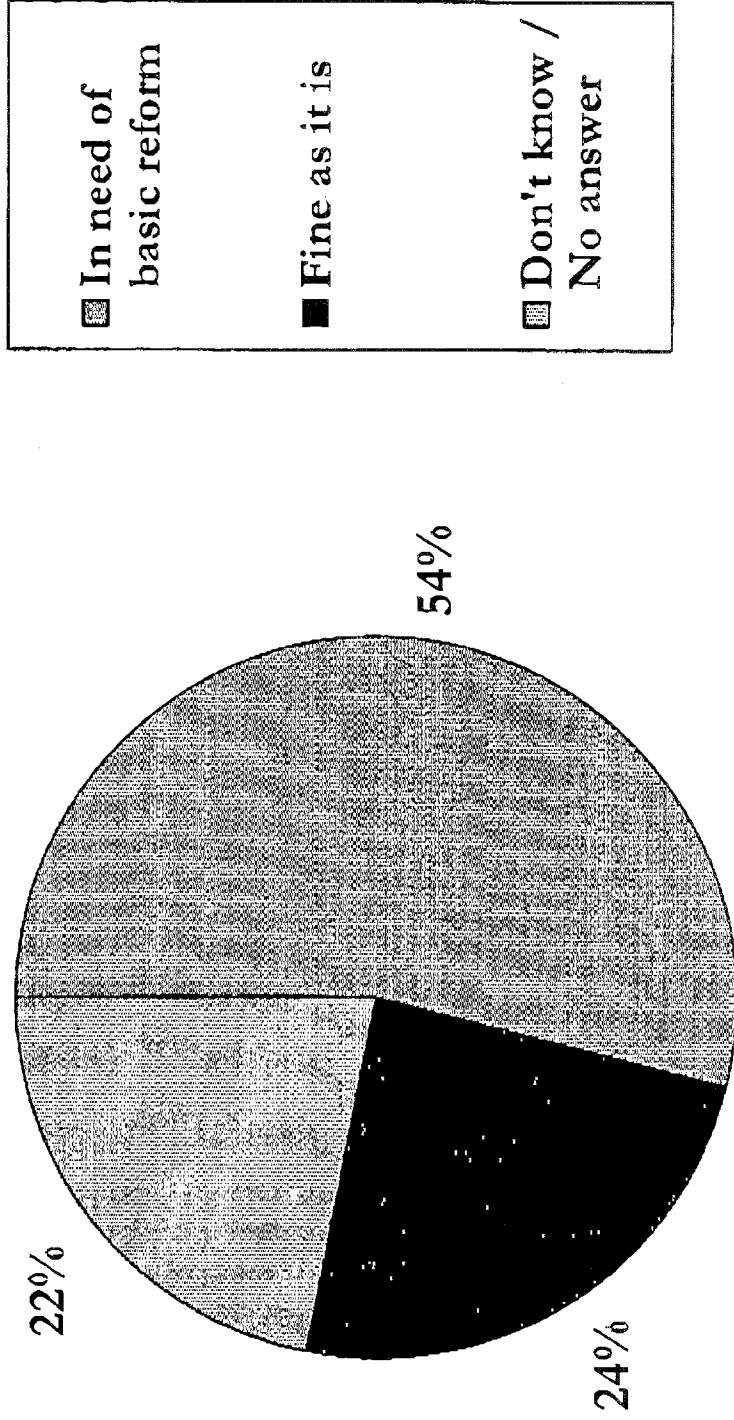




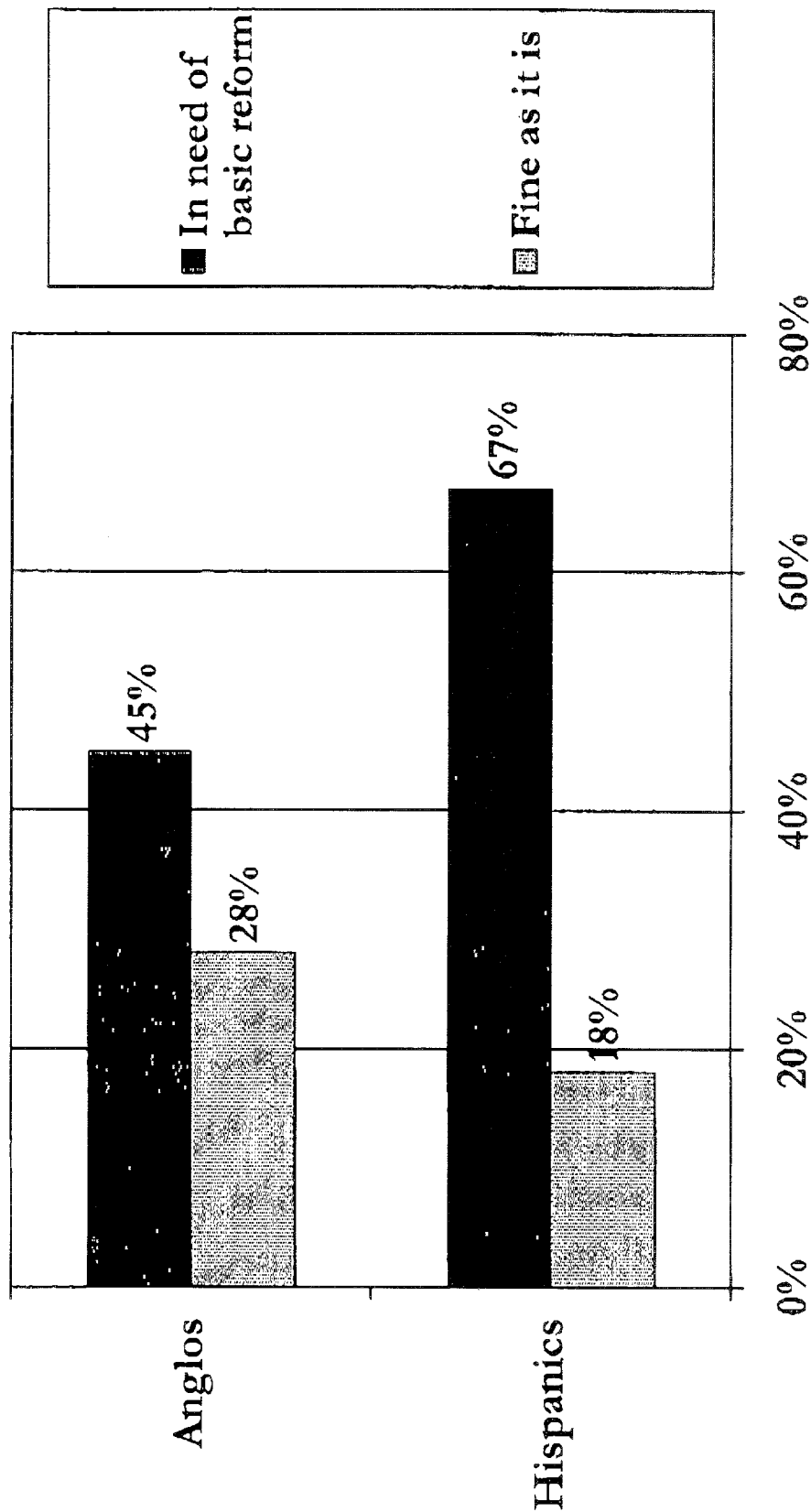
How would you rate the services offered by your condominium management, such as security, landscaping, parking, and maintenance?



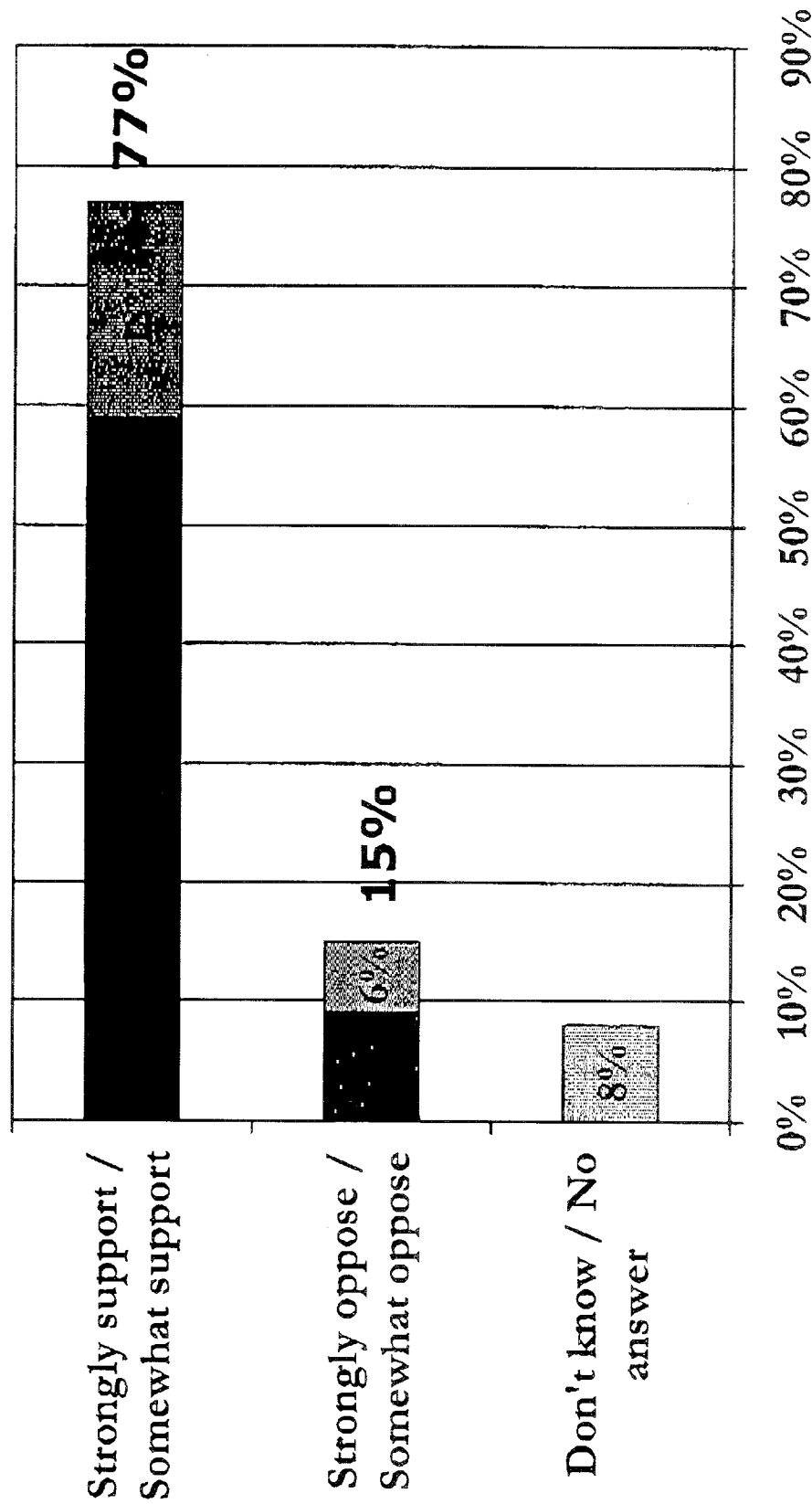
Do you think that the condominium management industry in Miami Beach is in need of basic reform or do you think that it is fine as it is?



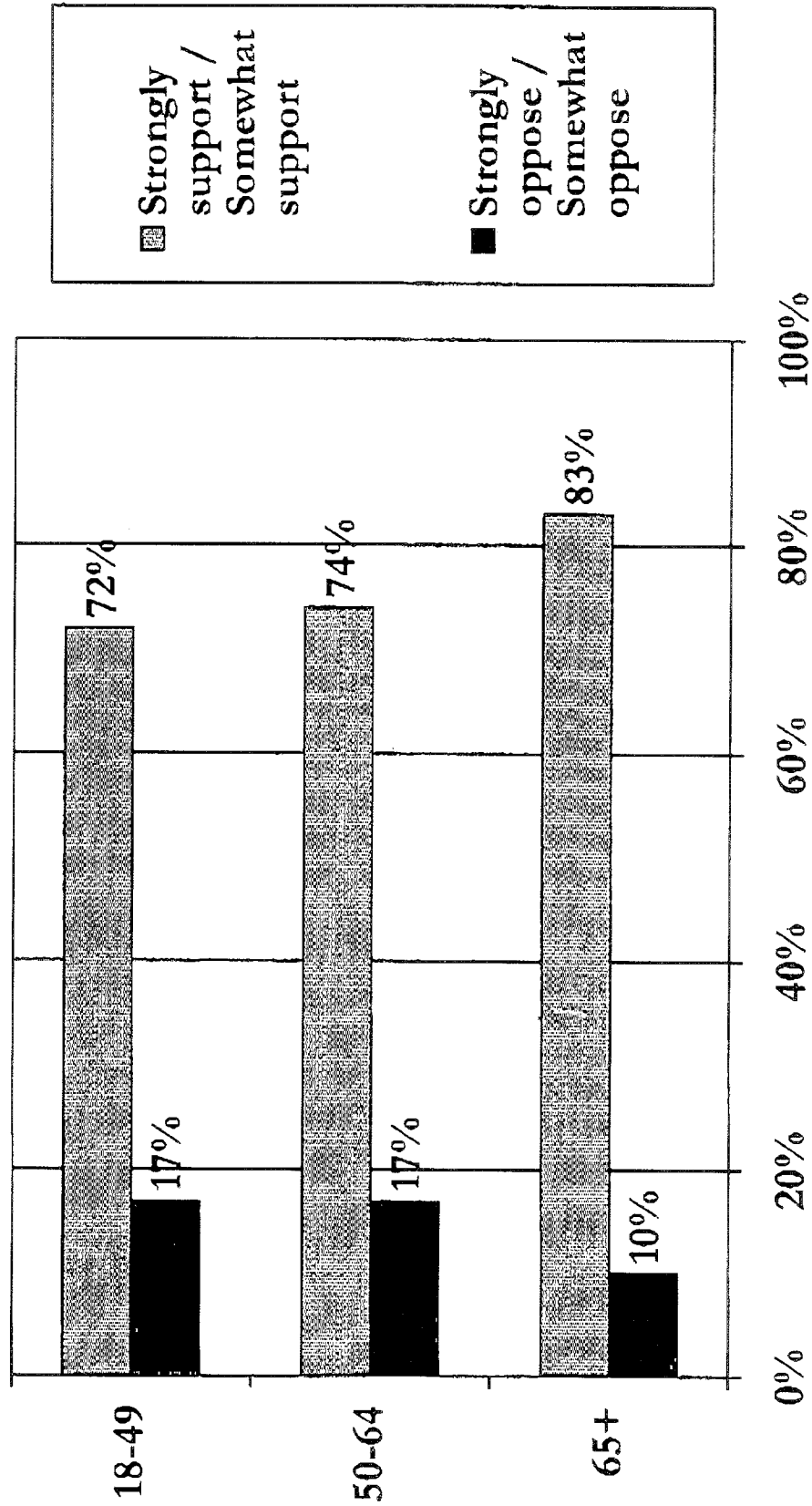
Do you think that the condominium management industry in Miami Beach is in need of basic reform or do you think that it is fine as it is?
By Ethnicity



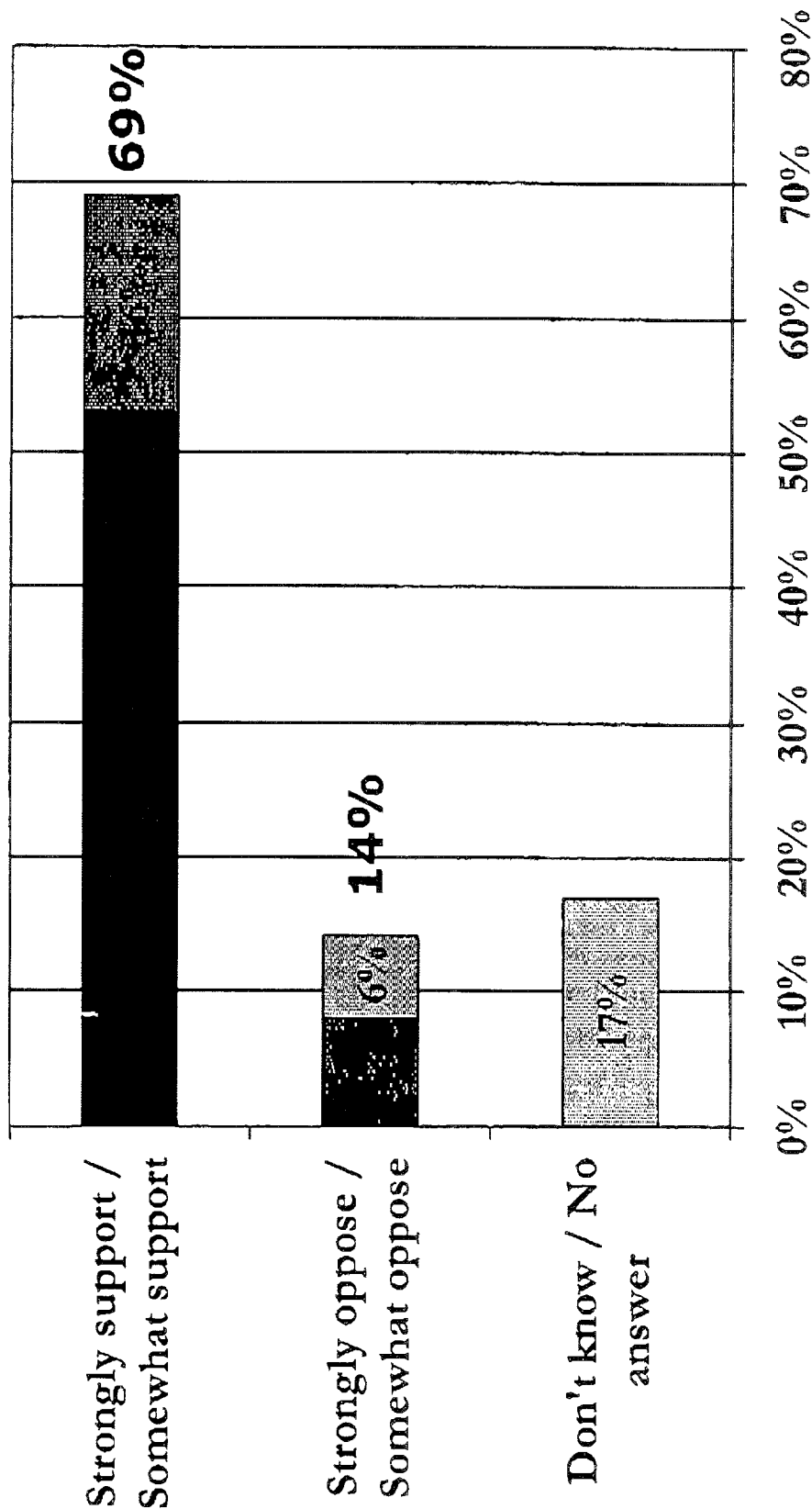
Workers at condominium buildings are to be trained in how to prepare for, respond to, and recover from hurricanes.



Workers at condominium buildings are to be trained in how to prepare for, respond to, and recover from hurricanes.
By Age

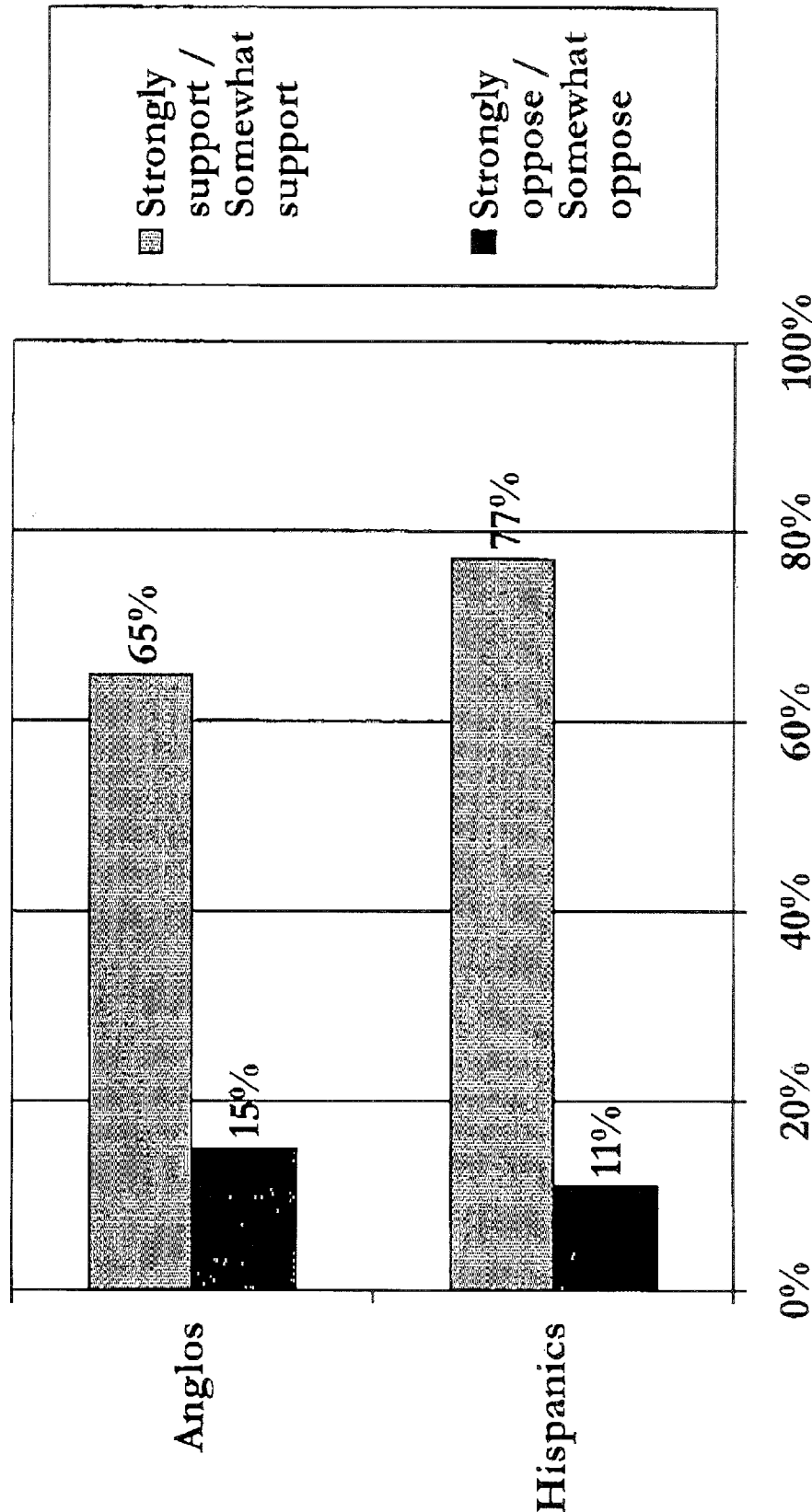


Companies that manage condominiums need to be licensed to ensure better services and accountability for the owners.

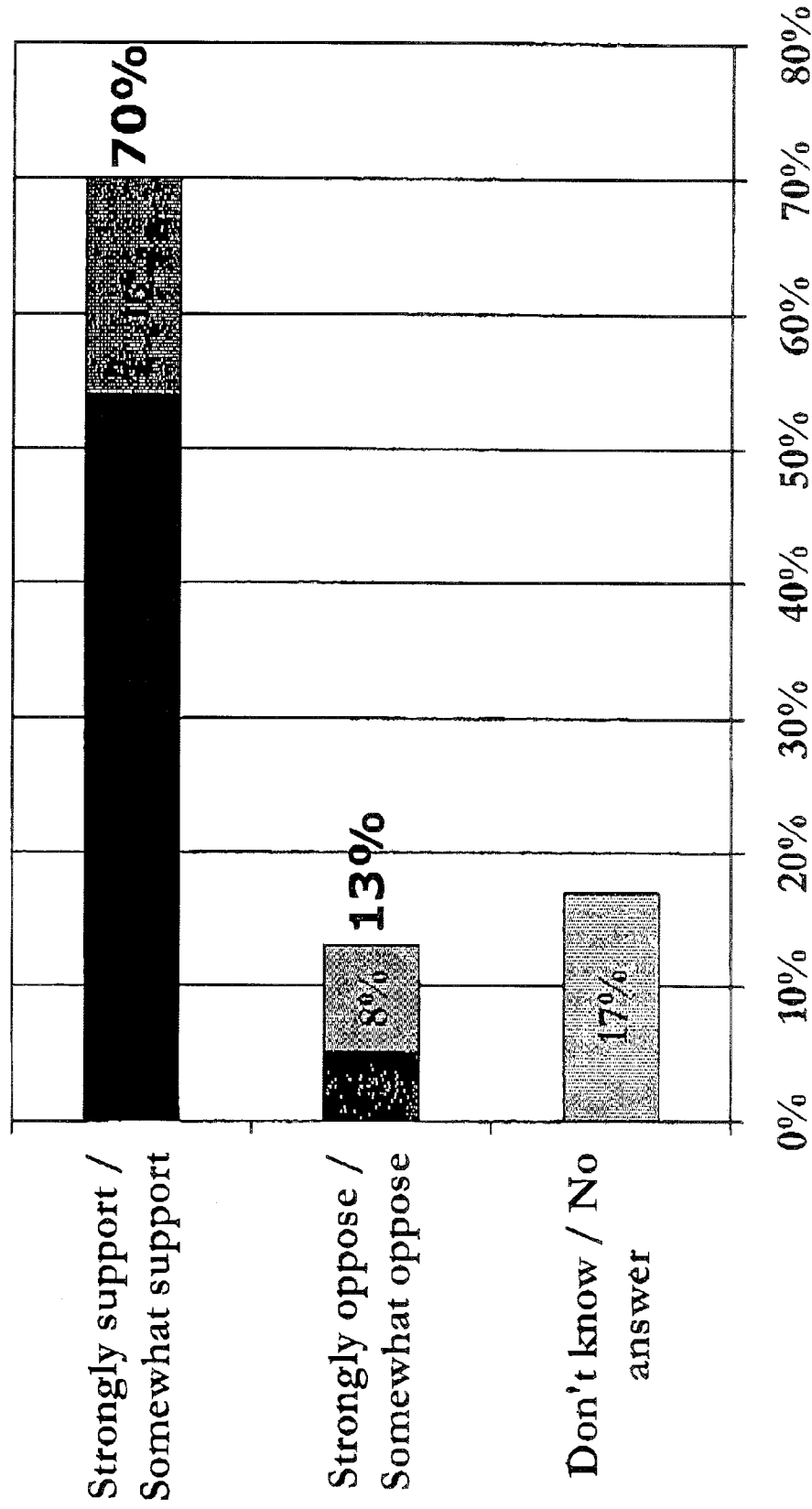


Companies that manage condominiums need to be licensed to ensure better services and accountability for the owners.

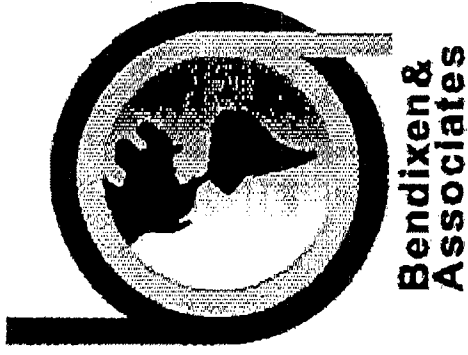
By Ethnicity



Requiring open bidding and financial disclosure when contracts are negotiated between condominium managers and outside contractors.



Contact:



2800 Ponce De Leon Blvd, #1111
Coral Gables, FL 33134
PH: 305.529.9916
FAX: 305.529.9069
sbendixen@bendixenandassociates.com
<http://www.bendixenandassociates.com>

BE IT ORDAINED BY THE PEOPLE OF MIAMI BEACH, FLORIDA:

Article of IX relating to Professional Services of Chapter 18 of Municipal Code of the City of Miami Beach relating to Businesses is amended by adding a new Division 5 relating to condominium management firms as follows:

DIVISION 5. CONDOMINIUM ASSOCIATION MANAGEMENT FIRMS**Sec. 18-475. Definitions.**

(a) Except as otherwise provided in this division, the definitions set forth in Section 718.103, of the Florida State Condominium Law shall apply to this division.

(b) "Condominium association management firm" means any person engaging in any of the following services requiring substantial specialized knowledge, judgment, and managerial skill for compensation:

(1) Controlling or disbursing funds of a condominium association;

(2) Preparing budgets or other financial documents for a condominium association;

(3) Assisting in the noticing or conduct of condominium association meetings; and

(4) Coordinating maintenance for the residential development and other day-to-day services involved with the operation of a condominium association.

A person who is charged only with performing the maintenance of a condominium community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

(c) As used herein, "person" has the meaning ascribed by section 1-2.

(Ord. No. 05-____, § _____, eff. _____)

Sec. 18-476. Licensure.

(a) A person may not engage in business as a condominium association management firm unless the person has a valid license issued by the city pursuant to this division.

(b) The application for licensure shall include the following:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including the names and addresses of all trustees, partners, persons with ten percent or more ownership interest in the applicant, including the names and

addresses of parents or subsidiaries holding such ownership interests directly or indirectly; all officers and directors of the applicant; and any other persons who will have the ability to control the operations of the condominium community association;

(2) The names of all parents, subsidiaries and financially related property service companies of the condominium community association manager that provide services to the condominium community association.

(3) An indication of whether the applicant, or any person identified in the application, has been found to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;

(4) For each natural person identified in the application, a complete set of fingerprints taken by an authorized law enforcement officer. The cost of processing shall be borne by the applicant.

(5) The name, telephone number, facsimile number, and e-mail address of one natural person identified in the application who will be the contact person for all communications from and to the city during the application period and the term of the license.

(c) The signed original of the application when filed shall be accompanied by a non-refundable application fee in the amount of \$100.

(d) To be eligible for a license, an applicant must:

(1) Be of good moral character. For the purposes of this division "good moral character" means a history of honesty, fairness and respect for the rights of others. A person may be deemed not to be of "good moral character" only if there is a substantial connection between the lack of good moral character and the professional responsibilities of the person which is supported by clear and convincing evidence;

(2) Not have been convicted of a felony within the last ten years and not be acting as a beneficial owner for someone who has been convicted of a felony within the last ten years; and

(3) Not have been convicted, or not be acting as a beneficial owner for someone who has been convicted, of a crime the city finds directly relates to the duties and responsibilities of a condominium association management firm within the last ten years.

Upon determination that an applicant meets the requirements of this division, such applicant shall be licensed upon payment of a license fee not to exceed \$200.

(e) Each condominium association management firm shall provide notice to the city by certified mail within thirty days of any change in information from that submitted with the application.

(f) A Condominium Association Management Firm license shall be valid for a two year term. Application for renewal shall be made using a license application form, although a complete set of fingerprints are not required for any person previously identified in an application for a Condominium Association Management Firm license for whom fingerprints have been made available to the city. The renewal fee shall not exceed \$200.

(Ord. No. 05-____, § ____, eff. _____)

Sec. 18-477. Hurricane Preparedness Training.

(a) Condominium association management firms shall provide hurricane preparedness training to all staff working in the condominium in the following categories pursuant to a qualified hurricane preparedness training program.

(b) "Qualified hurricane preparedness training program" means a program certified by a committee of civic leaders chosen by the Miami Beach City Commission and shall be designed to prevent or mitigate the impacts of, prepare for, respond to, and recover from hurricanes and other weather-related disasters. The program shall offer courses in the following areas:

(1) Hazard Mitigation – Actions taken to eliminate or reduce the degree of long-term risk to human life and property from natural and technological hazards.

(2) Preparedness – Actions taken in advance of an emergency to develop operational capacities and facilitate an effective response in the event an emergency occurs.

(3) Response – Actions taken immediately before, during, or directly after an emergency occurs, to save lives, minimize damage to property, and enhance the effectiveness and speed of recovery.

(4) Recovery – Activities initiated to return vital life support systems to minimum operating standards and long-term activity designed to return life to normal or improved levels.

(Ord. No. 05-____, § ____, eff. _____)

Sec. 18-478. Competitive Bidding.

(a) Any projects or services procured by the condominium association or board valued at over \$2,500 shall be subject to an open, competitive bid process. Bids under this subsection may be made pursuant to an open, informal bid process, or pursuant to written or telephone quotations, provided such quotations include the bidder's name and address.

(b) Projects or services valued at over \$10,000 shall be subject to a written, formal competitive bid process.

(c) The condominium board shall disclose in its financial statements any relationship between its members, the association, or the condominium association management firm, and bidders. Such disclosure shall be made regardless of the value of the projects or services, and regardless of the type of bid process used.

(d) Bids should be made available to unit owners upon written request to the condominium board once all bids have been submitted.

(e) The competitive bid exceptions set forth in Section 718.3026(2)(b) and (c) of the Florida State Condominium Law shall apply.

(Ord. No. 05-____, § _____, eff. _____)

Sec. 18-479. Injunctions

When the city has reasonable cause to believe that a person is violating this division, the city may enter an order requiring the person to stop the violation. The city may petition the court to enjoin the person from engaging in the violation, continuing the violation, or doing any act in furtherance of the violation. The court may order a preliminary or permanent injunction.

Sec. 18-480. Exceptions

The provisions of this division shall not apply to condominium association management firms providing services to condominiums of less than 50 units or of less than 75 feet in height.

(Ord. No. 05-____, § _____, eff. _____)

Sec. 18-481. Enforcement

(a) Enforcement of this division shall be by the police department. Upon conviction, violators may be subject to penalties provided in section 1-14.

(b) Additionally, violators may be subject to business license revocation procedures as set forth in sections 102-383 and 102-384 and suits for injunctive relief.

(Ord. No. 05-____, § _____, eff. _____)

Mayor David Dermer
Miami Beach City Commission
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Re: Potential Preemption of Proposed City Ordinance on Condominiums

Dear Mayor Dermer and Commissioners:

SEJU Local 11 has asked that we render a legal opinion on the proposed city ordinance dealing with the regulation of condo management firms as it relates to the issue of preemption. The proposed ordinance purports to amend Article IX of Chapter 18 of the Municipal Code of the City of Miami Beach, by adding a new Division 5 with language designed to regulate condominium management firms. We have conducted a review of the proposed ordinance. For ease of reference it is attached hereto as Exhibit A. Our review allows us to conclude that this proposed ordinance does not raise preemption concerns as it is not in conflict with existing state law.

It is important to note at the outset that the thrust of this ordinance deals with condo management firms. It does not purport to regulate condo ownership or condo associations. Therefore, no "field preemption" issues arise as a result of this ordinance. Where preemption issues were likely to surface, the proposed ordinance refers to or incorporates existing state statutory law, particularly Chapter 718, Florida Statutes. This drafting methodology avoids potential inconsistencies and overlaps which create preemption concerns and trigger state preemption.

For example, Section 18-478 dealing with Competitive Bidding, properly refers to Section 718.3026, Florida Statutes, thereby avoiding any inconsistency between state law and the city ordinance. Another area where preemption issues usually surface is in the definition section. In the attached proposal, the definition provisions in Section 18-475 again appropriately refer to Section 718.103, Florida Statutes.

We have found no provision in the attached ordinance inconsistent with existing state law. Accordingly, it is our opinion that the attached proposed city ordinance regulating condo management firms does not trigger state preemption concerns. This opinion assumes the reference to existing City of Miami Beach regulations regarding Administrative and Judicial Proceedings (which is not the subject of this ordinance) referred to in Section 18-481 of this ordinance, comport with existing constitutional due process and equal protection requirements.

Sincerely,

Albert T. Gimbel

ATG:cc
Enclosure

cc: Katchen Locke
Hiram Ruiz
Mark Herron

Scheduling of future meetings

DISCUSSION

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